

# State of Wisconsin



1997 Assembly Bill 755

Date of enactment: **April 27, 1998**

Date of publication\*: **May 11, 1998**

## 1997 WISCONSIN ACT 174

**AN ACT** to amend 30.14 (2), 30.28 (1), 30.28 (2m) (a), 30.28 (2m) (b) and 30.28 (2m) (d); and to create 30.206 (7), 30.207, 30.28 (2) (b) and 30.28 (2m) (am) of the statutes; relating to: issuing general permits for activities in navigable waters that are located in the Wolf River and the Fox River basin area or in another area as designated by the secretary of natural resources.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 30.14 (2) of the statutes is amended to read:

30.14 (2) **HEARINGS BY DEPARTMENT.** Upon complaint by any person to the department that any wharf, pier or other structure exists in navigable water in violation of s. 30.12 or 30.13 or 30.207 or that any wharf, pier or other structure proposed to be built in navigable water will violate s. 30.12 or 30.13 or 30.207, the department shall investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of those sections. If no hearing is held, the complainant shall be informed of the results of the investigation.

**SECTION 2.** 30.206 (7) of the statutes is created to read:

30.206 (7) This section does not apply to an application for a general permit for the Wolf River and Fox River basin area or any area designated under s. 30.207 (1m) if the application for the general permit may be submitted under s. 30.207.

**SECTION 3.** 30.207 of the statutes is created to read:

**30.207 General permit pilot program.** (1) **GEOGRAPHICAL AREA.** For purposes of this section, the Wolf

River and Fox River basin area consists of all of Winnebago County; the portion and shoreline of Lake Poygan in Waushara County; the area south of STH 21 and east of STH 49 in Waushara County; that portion of Calumet County in the Lake Winnebago watershed; all of Fond du Lac County north of STH 23; that portion of Outagamie County south and east of USH 41; that portion of Waupaca County that includes the town of Mukwa, city of New London, town of Caledonia, town of Fremont, and the portion and shoreline of Partridge Lake and the Wolf River in the town of Weyauwega.

(1m) **OPTIONAL AREA.** In addition to the the Wolf River and Fox River basin area, the secretary may designate another area of the state in which general permits may be issued under this section. If the secretary designates an area under this subsection, the secretary shall do so within 6 months after the effective date of the first permit issued for the Wolf River and Fox River basin area.

(2) **ACTIVITIES COVERED.** Within the Wolf River and Fox River basin area or any area designated under sub. (1m), the department may issue a general permit under this section authorizing any activity that would require a permit or approval under this chapter if the department determines that it is appropriate to issue a general permit under sub. (6). The department may issue a general per-

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

mit on its own initiative or based on an application submitted under sub. (3).

(3) APPLICATION FOR GENERAL PERMIT. (a) Any local entity, as defined in s. 30.77 (3) (dm), any group of 10 riparian owners who will be affected by the issuance of a general permit, or any contractor who is or has been involved in the construction of structures or along navigable waters may apply for a general permit under this section.

(b) Upon the request of a prospective applicant specified in par. (a), and before an application is submitted, the department shall meet with the prospective applicant, and other interested persons as determined by the prospective applicant or the department, to make a preliminary analysis of the likelihood that the department will issue the general permit.

(c) An application for a general permit under this section shall include all of the following:

1. The name, legal address and telephone number of each applicant.

2. A U.S. geological survey map or similar map that has a scale of not less than one inch per 2,000 feet and that shows the proposed permit area.

3. A general legal description to quarter-quarter section of the proposed permit area.

4. A diagram to scale showing the activity proposed for the general permit with contours and cross-section profiles that show a representative example of existing conditions and a representative example of any alteration to navigable waters or the adjacent lands that may result from the activity.

5. Topographic, bathymetric, soil or other maps, photographs or other data to demonstrate the characteristics of the proposed permit area if the maps, photographs or data are reasonably available.

6. The names and addresses of at least 5 persons who own real property adjacent to the navigable waters located in the proposed permit area. If fewer than 5 persons own real property adjacent to such waters, the application shall include the names and addresses of all of these persons.

(d) The department shall respond to the application in writing within 90 business days after receiving the application. In its response the department shall do either of the following:

1. Deny the application and specify the reason for the denial.

2. Specify the department's plans for proceeding on the application. The plans shall include a timetable for the notice and hearing required under sub. (4).

(4) ENVIRONMENTAL ANALYSIS; HEARING; CONSULTATION. After receiving an application that the department does not deny under sub. (3) (d) 1. and before determining whether to issue the general permit, the department shall do all of the following:

(a) Conduct an environmental analysis.

(b) Provide for notice and a hearing on whether to issue the general permit if so required under sub. (5).

(c) Consult with any of the following as the department considers appropriate:

1. Any local entity, as defined in s. 30.77 (3) (dm), that has an interest in the quality or use of or that has jurisdiction over the navigable waters located in the proposed permit area.

2. Any contractor who is or has been involved in the construction of structures or improvements in or along navigable waters located in the proposed permit area.

3. Any riparian owners whose property rights may be affected by the issuance of the general permit.

4. Any other interested party, as determined by the department or the applicant.

(5) HEARING REQUIREMENTS. If an activity for which an application for which a general permit has been submitted would be subject to the hearing and notice provisions under s. 30.02 (3) and (4) for the issuance of an individual permit, the department shall comply with those provisions. Notice and hearing shall be required on an application for a general permit under this section only if a notice and hearing are required under s. 30.02 (3) and (4) for the activity as part of an application for an individual permit under this chapter.

(6) ISSUANCE OF GENERAL PERMITS. The department shall issue a general permit under this section if the department determines that the cumulative adverse environmental impact of the activity in the proposed permit area is insignificant and that the issuance of the general permit will not injure public rights or interest, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owners.

(b) The standards for the activity contained in a general permit issued under this section shall supersede any conflicting standards required under this chapter for the activity.

(7) ACTIVITIES UNDER GENERAL PERMITS. (a) At least 15 days before beginning the activity that is authorized by a general permit under this section the person who wishes to conduct the activity shall submit a notice to the department and shall pay the fee specified in s. 30.28 (2) (b) 2. The notice shall describe the activity, state the name of the person that will be conducting the activity and state the site where the activity will be conducted. The notice shall also contain a statement signed by the person conducting the activity that the person will act in conformance with the standards contained in the general permit.

(b) Upon receipt of a notice that complies with par. (a), the department may inform the person that the activity may not be conducted under the general permit if conditions at the site where the activity would be conducted would cause adverse environmental impact, injure public rights and interests or cause environmental pollution, as defined in s. 299.01 (4). The department shall respond to

the person within 15 days after receiving the notice. Failure of the department to respond within 15 days shall constitute the department's approval of the activity under the general permit.

(c) A person conducting an activity that is authorized by a general permit under this section shall comply with any applicable local ordinances.

(8) **OPTION TO REQUEST INDIVIDUAL PERMITS.** A person proposing an activity for which a general permit has been issued under this section may apply for an individual permit under this chapter in lieu of seeking authorization under the general permit. A person proposing an activity for which a general permit has not been issued under this section may apply for an individual permit under this chapter.

(9) **ACCESS TO PROPERTY.** For inspection purposes, an employee or agent of the department shall have free access during reasonable hours to any site where an activity is proposed to be, is or has been authorized under a general permit issued under this section if the employee or agent shows to any person who is present at the site and who owns the site or is otherwise in control of the site either of the following:

(a) For an employee of the department, proper identification issued by the department.

(b) For an agent who is not an employee of the department, written documentation that the agent is authorized by the department to have access for inspection purposes.

(10) **SUNSET.** The department may not issue any further general permits under this section on or after the date on which 5 years have lapsed after the effective date of the first general permit issued under this section.

**SECTION 4.** 30.28 (1) of the statutes is amended to read:

30.28 (1) **FEES REQUIRED.** The department shall charge a permit or approval fee for carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and 30.21 to 30.27. The permit or approval fee shall accompany the permit application, notice or request for approval.

**SECTION 5.** 30.28 (2) (b) of the statutes is created to read:

30.28 (2) (b) 1. For an application for a general permit submitted under s. 30.207 (3), the fee shall be \$2,000.

2. For a notice submitted under s. 30.207 (7), the fee shall be \$100.

**SECTION 6.** 30.28 (2m) (a) of the statutes is amended to read:

30.28 (2m) (a) The department shall refund a permit or approval fee if the applicant requests a refund before the department determines that the application for the permit or approval is complete. The Except as provided in par. (am), the department may not refund a permit or approval fee after the department determines that the application is complete.

**SECTION 7.** 30.28 (2m) (am) of the statutes is created to read:

30.28 (2m) (am) The department shall refund 50% of the fee specified in sub. (2) (b) 1. if the department denies an application for a general permit under s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

**SECTION 8.** 30.28 (2m) (b) of the statutes is amended to read:

30.28 (2m) (b) If the applicant applies for a permit ~~or~~, requests an approval, or submits a notice under s. 30.207 (7) after ~~the~~ project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

**SECTION 9.** 30.28 (2m) (d) of the statutes is amended to read:

30.28 (2m) (d) The department, by rule, may increase any fee specified in sub. (2) (a). The department, by rule, may increase a fee specified in sub. (2) (b) only if the increase is necessary to meet the costs incurred by the department in acting on general permits or on notices submitted under s. 30.207.

#### **SECTION 10. Nonstatutory provisions.**

(1) **REPORT.** The department of natural resources shall submit a report on the issuance of general permits under section 30.207 of the statutes, as created in this act, to the appropriate standing committees of the legislature in the manner provided in section 13.172 (3) of the statutes. The department shall submit this report no earlier than the first day of the 3rd year beginning after the effective date of this subsection and no later than 60 days after the date on which the department may no longer issue general permits as provided in section 30.207 (10) of the statutes, as created in this act.